

1909-029 Chancery Causes: C. P. Carter vs. Floyd Kern &  
Lee Co.

Brickey, Hyatt, Stoney Creek Lumber Co], Henner

CA-Debt  
T-Property

-Deed



To the Honorable H.A.W. Skeen, Judge of the Circuit Court of Lee County, Virginia:

Humbly complaining, your orator C.P. Carter, will respectfully show to your honor that on the 5th day of August, 1901, one Floyd Kern executed and delivered to your orator his note in writing, commonly called a promissory note, by which he promised to pay to your orator one day after date thereof the sum of \$197.68 for value received, waiving the benefit of his homestead exemption, all of which will more fully appear from said note which is filed herewith as a part hereof marked "Exhibit No. 1".

Your orator will further show your honor that although the day fixed for the payment of the debt evidenced by said note has long passed, and although the said Floyd Kern has been often requested to pay said debt and lift said note, he has failed and refused to do so, and at the date of the issuance of the writ in this case had paid no part of said sum, but since the institution of this suit he has paid on said debt the sum of \$89.34, the balance of said debt is still due and owing.

Your orator will now show your honor that the said Floyd Kern is the owner of certain lands situated in this County. One tract purchased by him from Thomas McPherson and wife lying on Newman's Ridge Lee County Virginia, containing, by estimation, 70 acres more or less and is properly described in the deed from Thomas McPherson and wife to the said Floyd Kern, dated on the 31st day of December, 1897, duly recorded in the Clerk's office of the County Court of Lee County in Deed Book 34, page 414, a certified copy of which deed is herewith filed as a part hereof marked as "Exhibit No. 2"; that he is the owner of another tract of land, or rather a moiety thereof purchased by himself and one E.N. Brickett, which said tract of land is also situated on Newman's Ridge in Lee County and contain 25 acres more or less, and was conveyed to the said Kern and Brickett by J.V. Walden and wife by deed dated the 17th day of March, 1899, duly recorded in the Clerk's



Office of the County Court of Lee County, in Deed Book 34, page 415, a copy of which deed is herewith filed as part hereof, marked "Exhibit No.3". This tract of land has never been partitioned between the said Brickey and Kern, as your orator is advised, but they still hold the same jointly, each owning a one undivided half interest therein.

Your orator will further show your honor that on the 21st day of January, 1901, the said Floyd Kern, at a judicial sale, purchased from L.T. Hyatt, Special Commissioner in the Chancery cause, then and now pending in your honor's Court, of J.L. Glass et al v. E.A. McPherson et al, another tract of land, lying on Newman's Ridge, Lee County, Virginia, and adjoining, as your orator is advised, the tracts of land above described. This sale was duly reported to the Court and by a decree entered in said cause on the 4th day of March, 1901, was confirmed and after said confirmation, commissioners were appointed to lay off to the said Kern the land so purchased by him. These commissioners performed their duty and reported their action to Court and at the November term, 1901, said report was confirmed. This tract contains as your orator is informed 28 acres more or less. Said Kern agreed to pay for this land the sum of \$321.43. He paid down in cash \$133.72 and executed his notes for \$62.56 each due respectfully in one, two and three years from the day of sale. Your orator is informed that the said Kern has paid one of said deferred payments and that the other two are still due; and your orator is further informed that the sum still due to said Commissioner on said two deferred payments is the full value of said land, and that if it was resold it would not more than pay the balance due thereon.

Your orator will now show your honor that on the 17th day of May, 1902, by deed of that date, the said Floyd Kern conveyed the whole of said first mentioned tract of land and his interest, one-half undivided, in the second above mentioned tracts to his mother, Delila J. Brickey, during her natural life and after her death, to his son, Bradley Kern, but your orator is unable to say whether the tract pur-



chased from Commissioner Hyatt was likewise conveyed, but he thinks it probable that it was. This deed was admitted to record in the County Court Clerk's Office of Lee County on the 17th day of May, 1902, in Deed Book 39, page 6, and a copy thereof is herewith filed as a part hereof marked "Exhibit No.4". From an inspection of said Deed your honor will see that it shows on its face to have been made in consideration of natural love and affection alone and is purely voluntary and upon consideration not deemed valuable in law; and your orator is advised that such being the case said conveyance is, under the laws of Virginia, void as to any debts owed by the said Floyd Kern at the time of the execution and delivery of said deed; and your orator is further advised and he here charges that said deed was executed by the said Floyd Kern with the specific purpose and intention to delay, hinder and defraud his creditors, especially your orator, in the collection of their debts.

Your orator is further advised that said land mentioned and described in the this bill and conveyed by the said Floyd Kern to his mother and child as aforesaid is the only visible or known property of the said Floyd Kern, and that by said conveyance he striped himself of all property subject to the payment of his debts; that there are no other liens upon said property so conveyed except those mentioned in the bill; that said property will not rent for enough in five years renting to pay said debt, interest and cost; that the said Bradley Kern is an infant less than two years old.

Now the object of this bill is to set aside, annul, vacate and hold for naught said deed and to subject the land conveyed ~~by it~~ ~~to the payment~~ by the said Floyd Kern to his mother and child by said deed aforesaid to the payment of your orator's debt and the debts of such other creditors as may choose to seek relief by it; and in this connection your orator will here show your honor that he has filed with the Clerk of the County Court of Lee County a memorandum setting



forth the title of this cause, the general object thereof, the Court wherein pending, the amount of the claim asserted, a description of the property and the name of the persons intended to be affected thereby, and the same is filed herewith as a part hereof, marked "Exhibit No.5"; and to affect the objects of this bill, he prays that Floyd Kern, Delila J.Brickey, Bradley Kern and L.T.Hyatt Commissioner, be made the parties defendant to this bill that the said adult defendants be required to answer the same, but not under oath that being waived; that a guardian ad litem be appointed to answer for the infant defendant; that upon a final hearing, said deed be set aside and annulled and said land or a sufficiency thereof be decreed to be sold for the payment of your orator's debt and such other debts as may be sought to be collected by this suit; and for full general relief; and he will ever pray &c.

C. J. Duncan )  
Geo. P. Credlin ) :- P.C.



To the Hon.H.A.W.Skeen,Judge of the Circuit Court for Lee County;

The petition of The Stoney Creek Lumber Co.( incorporated )  
filed in the chancery cause of C.P.Carter vs Floyd Kern,et al.

Humbly complaining,your petitioner,the Stoney Creek Lumber  
Company, an incorporation, organized and doing business in the  
State of Virginia,would respectfully represent and show unto your  
honor;

That at the 1st June Rules,1902,one C.P.Carter filed his  
bill in cahncery against Floyd Kern,Delia J.Brickey,Bradley Kern  
(infant) and L.T.Hyatt,commissioner,the object of which was to set  
aside certain deeds which had been made by Floyd Kern to Delia J  
Brickey and Bradley Kern on account of the consideration in said  
deed being wanting,<sup>and voluntary</sup> and beacuse made for the purpose of hindering  
<sup>defrauding</sup> and delaying the creditors of the said Kern,and to subject the  
said land so conveyed to the payment of a certain debt which the  
said plaintiff alleged the said Floyd Kern owed him;

That on the 13th day of March,1902,the said Floyd Kern,<sup>was</sup>  
~~being~~ indebted to the said Stoney Creek Lumber Co.,Inc.,in settle-  
ment of a portion of said indebtedness executed to said petitioner  
a note for the sum of \$843.10,due and payable six months after date,  
which note waived the benefit of the homestead exemption, that  
the said Floyd Kern is also indebted to the said petitioner for  
balance on account,the amount of which is \$94.02.,and for the dates  
and items of the said account reference is here made to exhibit "B"  
here filed as part of this petition; the said note above refered  
to is also filed as part of this bill as exhibit "A";

Your petitioner also avers that at the time the said  
Floyed Kern was so indebted to your petitioner he was the owner  
of certain tracts or parcels of land,as set out in the said bill  
of the said plaintiff,C.P.Carter,to wit,a tract of 70 acres purchased  
from Thomas McPherson,,containing about 70 acres,and fully scribed  
in "Exhibit 2" of the said plaintiff bill,which is here asked to be  
considered as part of this petition,also an undivided moity in  
another tract of land conveyed by J.V.Walden and wife to the said



Kern and E.N.Brickey, and fully described in a copy of said deed filed with the said Carters bill as "Exhibit 3", also another tract of land which the said Kern had purchased from L.T.Hyatt comr. in the chancery cause of J.L.Glass vs E.A.McPherson, to which the said Kern has not as yet received the conveyance as the same has not been fully paid for;

Your petitioner furthur avers that on the 17th day of May, 1902, by a deed bearing that date the said Floyd Kern conveyed to his mother Delia J. <sup>Y</sup>~~Bickley~~ during her natural life, and at her death to his little infant son, Bradley Kern the whole of his said estate, which deed on its face shows was made for natural love and affection, which your orator is advised is voluntary; and ~~x~~ it furth ur avers that said conveynce was not only voluntary, but was made for the express purpose of hindering and dealying and defrauding the creditors of the said Floyd Kern, and especially your petitioner in the collection of its said debt. The said deed is of record in the office of the Clerk of the ~~County~~ Court for Lee County, and a copy of the same is filed with the said plaintiffs bill as exhibit "4".

The object therefore of this petition is to be permitted to join with the said plaintiff in said suit in seeking to have said deed set aside and said lands subjected to the payment of the said debts. To this end therefore ~~he~~ prays that ~~x~~ it be allowed to file this petition, that the said Floyd Kern, Bradley Kern and Delia J. <sup>Y</sup>~~Bickley~~ be made parties defendant therto, and required to answer *\* that a G. A. R. be appointed to defend said infant defendant* the same but not under oath, that being specially waived, <sup>^</sup> that said deed be set aside and declared for naught and that the said debt of said petitioner be declared to be a lein on the said land from the date of the filing of the said petition, and the memoranda left with the clerk of the county court for Lee County under sec. 2460 of the Code, and a sale awarded of enough of the said land as shall be necessary to pay said debt of said petitioner. And may all other furthur and general relief be granted your petitioner



that the nature of its cause and equity sanctions, and it will,  
as in duty bound, ever pray &c.

The Stoney Creek Lumber Company,

By

Pennington Bros P.Q.



C. P. Carter

VS Petition of  
Stacy Creek  
Lumber Co

Flayed Kerrietal

Filed in open Court  
and by leave thereof  
Nov 10th 1902

A. B. Munsey Clerk



Stony Creek, Scott Co., Va.

\$ 343  $\frac{10}{100}$ .

March 13, 1902.

Six months After date I  
pay to The Stony Creek Lumber Co Inc or order  
Three hundred & forty three &  $\frac{10}{100}$  Dollars  
For value received. Payable at Office Stony Creek Lumber Co

And each of us, whether maker or endorser, hereby severly waives and renounces for himself and family any and all homestead or exemption rights he may have under or by virtue of the constitution or laws of the State, or of the United States against this note or renewal thereof.

Witness  
H. M. [unclear] Mitchell  
Due Sept. 13 - 1902.

Floyd X Kern  
mark [L. S.]



J. H. Sheip, Pres.

Asa W. Vandegrift, Treas.

E. M. Henofer, Sec'y &amp; Mgr.

TACOMA, VA., Sept. 17, 1902

91

r. Floyd Kern dr to~~Brought~~ **Stony Creek Lumber Co.,**

INCORPORATED

**Manufacturers of Thin Poplar Lumber  
AND HARD WOODS.**TERMS :.....  
1901

April 26	To	Store a/c	13	11
"	"	" Feed "	18	71
May 6	"	Cash for sewing machine	14	00
" 19	"	Store a/c	22	61
" 19	"	Feed a/c	35	59
			<u>104.02</u>	

Per.

June 28	By	Cash per Chas. Perry	5	00
July 31	"	" " " "	5	00
Dec				
Dec 17	"	" " " "		
			<u>\$94.02</u>	
			<u>15.00</u>	
			<u>\$79.02</u>	

$$\begin{array}{r}
 343.10 \\
 94.02 \\
 \hline
 437.12
 \end{array}$$



Sept 17 - 1902

Floyd Clem & Co to Storybuck  
Lumber Co.

Store a/c

1902					
Mar	17	To	1 Coat (Jas Costel)	1.50	✓
"	"	"	3 yds Black domestic	.25	✓
"	18	"	50# flour (Jas Costel)	1.40	✓
"	22	"	Tobacco	.15	✓
Apr	3	"	Tobacco (Jas Costel)	.50	✓
"	5	"	Bacon	1.60	✓
"	"	"	25# flour	.70	✓
"	7	"	Tobacco	.10	✓
"	8	"	Paid a bill	1.20	✓
"	"	"	Tobacco	.05	✓
"	"	"	Tobacco (By Roe Strong)	.05	✓
"	9	"	50# flour (J. Costel)	1.40	✓
"	"	"	Axle Grease	.10	✓
"	"	"	Tobacco (Roe Strong)	.20	✓
"	"	"	Hamburg	.14	✓
"	12	"	Pd H. Davison Bond	1.76	✓
"	14	"	" " " "	.95	✓
"	"	"	1 Can Oysters (Roe Strong)	.12	✓
"	"	"	Tobacco (" ")	.10	✓
"	"	"	Pd H. Davison Bond	.52	✓
"	15	"	" " " "	92	✓
				<u>13.11</u>	



Hoyd Kern Dr To  
 Stonybrook Lumber Co  
Feed etc

1902

Mar	19	20	Hay	.16
"	20	"	1/2 Bus Corn	.45-
"	27	"	Hay	.30
"	31	"	"	.16
Apr	4	"	2 Bus Corn	1.80
"	"	"	1 OK	.10
"	"	"	130# Hay	1.40
"	7	"	93# "	.98
"	"	"	2 Bus Corn	1.80
"	"	"	1 Sack	.10
"	8	"	125# Hay	1.33
"	9	"	2 Bus Corn	1.80
"	"	"	1 Sack	.10
"	10	"	125# Hay	1.33
"	"	"	2 Bus Corn	1.80
"	"	"	1 Sack	.10
"	12	"	2 Bus Corn	1.80
"	"	"	1 OK	.10
"	14	"	2 Bus Corn	1.80
"	"	"	1 OK	.10
"	"	"	145# Hay	1.55
"	"	"	1/2 Bus Corn 4/3	45-
"	15		<del>By Book 80</del>	19.51
"	15		Less 8 sacks	80

1871



# Feed all page 2

1902

apr 16 To Amt Brok feed

18.71

" " " 130# Hay 1.39

" 19 " 2 Bus corn 1.80

" " " 1 sock .10

" 21 " 2 Bus corn 1.80

" " " 1 sock .10

" 22 " 2 Bus corn 1.80

" " " 1 sock .10

" 24 " 2 Bus corn 1.80

" " " 1 sock .10

" 25 " 92# Hay .97

" " " 2 Bus oats 1.30

" " " 1 sock .10

" 28 " 2 Bus corn 1.80

" " " 1 sock .10

" " " 97# Hay 1.05

" 29 " 2 Bus corn 1.80

" " " 1 sock .10

" " " 93# Hay .99

" 30 " 2 Bus corn 1.80

" " " 1 sock .10

May 2 " 98# Hay 1.04

" 5 " 95# " 1.01

" " " 2 Bus corn 1.80

" " " 1 sock .10

" 6 " 2 Bus corn 1.80

" " " 1 sock .10

24.75



# Store a/c. Page 2

1902

Apr	17	2 amt Brothford	<del>13.11</del>	13.11
"	18	" Tobacco (Roe Strong)	.15✓	
"	"	" Order Stephen Fields	2.60✓	
"	"	" Paid Jas. Gibson	1.30✓	
"	19	" Pr shoes (Roe Strong)	1.50✓	
"	"	" Candy ( " " )	.10✓	
"	22	" Tobacco	.10✓	
"	"	" Axle Grease	.10✓	
"	"	" Pea Nuts (Roe Strong)	.05✓	
"	"	" Tobacco ( " " )	.05✓	
"	23	" Paid Mrs Davison	.15✓	
"	"	" 1 Box Gall Cure	.25✓	
"	"	" Peanuts (Roe Strong)	.05✓	
"	24	" Paid Richard Thompson	1.50✓	
"	26	" Tobacco	.05✓	
"	"	" Tobs (Roe Strong)	.05✓	
"	"	" Ketchup " "	.05✓	
"	"	" Shirt Collar	.65✓	
"	"	" 1 Pr shoes (Davison)	1.50✓	
"	"	" 1 " "	2.00✓	
"	29	" Paid H. Hedman	5.00✓	
May	1	" Miss Heastel	3.19✓	
"	2	" Oysters Thorpe (Roe)	.12✓	
"	3	" Candy (Roe)	.10✓	
"	5	" Axle Grease 10 lbs 10	2.00✓	
"	7	" Salt	.05✓	
"	2	" 1 pr pants	1.75✓	22.61
Total				35.72



# Feed ac. Page 3

1902

May	7-	To amt Brok food	24.95	18.71
"	"	" 70 # Hay	.75	
"	8	" 2 Bus corn	1.80	
"	"	" 1 sack	.10	
"	9	" 96 # Hay	1.13	
"	10	" 93 # "	.99	
"	"	" 2 Bus corn	1.80	
"	"	" 2 " Oats	1.30	
"	"	" 2 sacks	.20	
"	13	" 90 # Hay	.97	
"	15	" 100 # corn	1.60	35.59
				54.30



To the Hon. H. A. W. Skeen, Judge of the Circuit Court for  
Lee County, Virginia:

The separte demur<sup>er</sup> and answer of L.T. Hyatt, commissioner,  
to a bill in Chancery, exhibited in said court against himself and oth-  
ers by C. P. Carter.

Respondent<sup>says</sup> that said bill is not sufficient in law, and he  
demurs thereto, and prays judgment of the said demurrer. For answer  
to said bill, or to so much thereof as he deems necessary, Respondent  
says that it is true that he, as commissioner in the Chancery cause of  
J. L. Glass, et al, vs. E. S. McPhearson, executor, et al, sold to the  
said Floyd Kern the 28 acre tract of land mentioned in said bill, and  
that there<sup>is</sup> still due<sup>on</sup> the purchase price thereof, two notes or bonds  
for the sum of \$62.56, each with interest from Jan. 21, 1901, which bonds  
will become due on the 21st day of Jan, 1903 and 1904, respectively.  
Respondent says that in case of sale in this suit he should be declared  
to have a first lien on the said 28 acre tract of land for the amount  
of the said two bonds with interest.

And now having answer the said bill as fully as deemed nec-  
essary, respondent prays to be hence dismissed with his cost, &c.

L. T. Hyatt, p.d.



C. P. Carter

v { In Chancery.

Floyd Kern et al.

Answers of L. P.  
Hyatt, Commissioner.

Filed in open court  
and by leave thereof  
July 2<sup>nd</sup> 1902.

A. B. Munnery Clerk



To the Honorable H.A.W.Skeen, Judge of the circuit court for Lee County, Virginia:

The separate demurrer and answer of Floyd Kern to a ~~xxxx~~ petition of the Stoney Creek Lumber Co., incorporated, filed in the chancery cause of C.P.Carter against Floyd Kern and others.

Respondents say that the said petition is not sufficient in law to call upon him for further answer, and he demurs thereto, and prays judgment of his said demurrer.

But should further answer be required of him answering he says: That it is not true, as respondent verily believes, that on the 13th day of March, 1902, he was indebted to the said Stoney Creek Lumber Co. in any sum of money. At that time, however, respondent did sign the note exhibited with the said petition for the sum of \$345.10. And in this connection respondent desires to state further that he had then been working for said Company for a number of years, at the business of cutting and sawing trees, and snaking and hauling logs, and other labor nad work, and during all that time, at each and every pay day in each month, as respondent now remembers, there was a balance due respondent by said Company, according to their own books; that on the pay day next before the execution of the said note the agent of said Company claimed that respondent had overdrawn his account about \$40.00, at any rate a very small sum. A day or so before the date of the execution of the said note respondent finished up a large logging contract. During all the time respondent was engaged at work under the said contract the said Company had retained 50¢ per thousand feet of the logs taken from the Frank Boatright land and 25¢ per thousand feet of the logs taken from the Dr.Howard land, as a guarantee for the completion of said contract, which sums so retained were to be paid to respondent upon the completion of the said contract, and respondent alleges that he logged from the said Boatwright land nearly four hundred thousand feet of logs, and from the said Dr.Howard land about three hundred thousand feet of logs. Respondent says that his expenses during the last month of said con-



tract his expenses were not as great as formerly, and he did not take up as much of his wages as commonly, and respondent verily believes that there was due him a considerable sum of money. But on the day the said note was executed, respondent went to the office of E.M. Henofer, Manager of said Company, and told him that he had completed the contract, and that they had better settle. Said Henofer went over his books and announced that respondent was due said Company \$343.10 and wanted ~~him~~ <sup>him</sup> to execute a note for same. Respondent then told the said Henofer that he was illiterate, and could not tell anything about the books, and asked him if after signing the said note, he would be permitted to have some go over the books, and if any mistakes should be discovered the same should be corrected and if necessary and if necessary credited on said note, and with this understanding and agreement respondent signed the said note. Respondent says that since executing said note he has studied the matter over and taking into consideration the fact of the amounts retained as hereinbefore stated which should have been credited to him at the completion of his logging contract, and the fact that his account was square only a few weeks before the date of the execution of said note, and the further fact that he was not <sup>paid</sup> ~~due~~ that few weeks working as many hands as usual, and has concluded that at the date of the execution of said note he did not the said Company anything, but upon the contrary that said Company must have been due him a considerable sum of money.

Respondent further states that after the execution of said note it was discovered that he had not been given credit on his account for \$75.00 for ten days hauling with a six horse team &c. the time not having been turned in by John Jones the time keeper, and respondent thereupon went to the said Henofer and called his attention to that matter, whereupon said Henofer agreed to credit the said note with the said \$75.00.

Respondent further says that after the date of the execution of said note he performed labor and services for the said Company as a night watchmen for ten night at the agreed price of \$1.25 per



night, and he has never been given credit on his account for this labor and service.

(2) Respondent further says that after the said 13th day of March 1902, he hauled or had hauled with a four horse team at the agreed price of \$5.00 per day a number of days for said Company, but the exact number of which he personally unable to state, but beleives to be something like 15 or 20 days, and if allowed to so he will furnish at the proper time full and satisfactory proof of the number of days which said four horse team did haul logs for said Company and the amount for which he is entitled to credit on account of said hauling.

(2) Respondent further states that he quit work for said Company the latter part of April or the first part of May, 1902, and at that time left on the premises of said Company a good log wagon; that the said Company took charge of said log wagon and has been using it & from that time up to this, and that the hire of said wagon is reasonably worth 50 cents per day for the time the same was in actual use. Respondent does not know personally or even by information of the number of days which the said Company has used the said wagon, but if permitted to do so he will furnish the best proof obtainable of the time they have so used it. And respondent asks that he be given credit on his account for the use of said wagon at the rate of 50 cents per day for the number of days which said Company may have used it. *allow 7/10 15*

(2) Respondent further states that he ~~xxx~~ gave the said Henofer an order on Charles Perry for the sum of \$28.75 which when collected was to be credited to the account of said respondent, and respondeent alleges that said Company has collected on said order the sum of \$25.00 and have only given this respondent credit on said account for \$15.00 of the amount so collected, and respondent asks that they be required to credit him account with the said \$15.00.

Respondent further says that a number of items charged to him on the account filed by the said Company with its petition were never purchased by him, and are improper charges, as to which items he pleads non-assumpsit.



Respondent therefore says that the note sued on was obtained through fraud and misrepresentation, at a time when he was in great mental trouble on account of the extreme illness and death of his wife which occurred about the date of the execution of the said note; and he asks that the said plaintiff be required to exhibit before a commissioner of this court its books of account with respondent; that such commissioner be directed to go over the said books and arrive at the true state of indebtedness between plaintiff and respondent, and that he be given a judgment against the said plaintiff for any amount which may be found to be due him on a just and fair settlement of all matters and accounts between them.

Your orator further prays that the said plaintiff be required to exhibit before the court all contracts with this respondent, upon which final settlements have not been made.

Your respondent further asks that the said note sued on be declared null as having been obtained by fraud and misrepresentation.

Your respondent further represents that the plaintiff has instituted his action at law in this court upon the said note and account set up in its bill in this case, seeking to obtain a personal judgment against respondent thereon, so as to bind his other real estate, not heretofore conveyed by him. Your respondent asks also that the said plaintiff be enjoined from the further prosecution of said action at law, until the matters of fraud and misrepresentation herein set up have been passed upon.

Respondent most emphatically denies the allegations of said bill to the effect that the conveyance by him of certain of his lands to his mother was made with intent to hinder delay, defraud &c., but upon the contrary he alleges that the said conveyance was for a fair and valuable consideration.

And now having fully answered, respondent prays to be hence dismissed &c.,

L. T. Hvatt, p. q.



Stoney Creek Lumber Co.

v { In Chy

Floyd Kern et al

Answer of Floyd Kern

L. T. HYATT,  
ATTORNEY AT LAW,  
JONESVILLE, VIRGINIA.



To the Hon. H. A. W. Skee Judge of the  
Circuit Court for Lee County Virginia:  
The Separate answer of Dudley  
Kerin, an infant under age of  
twenty one years, by B. H. Sewell  
his guardian ad litem, assigned  
to defend him in this suit, to a  
bill of Complaint exhibited  
against him and others, in  
the Circuit Court for Lee County  
Virginia, by C. P. Coates,

The respondent, reserving to  
himself the benefit of all just  
exceptions to the said bill, for  
answer thereto, or to so much  
thereof as he is advised that it  
is material he should answer,  
by his said guardian ad litem,  
answers, and says:-

That he is an infant of tender  
years, and by reason of his  
infancy is incapable of  
understanding, or of taking  
care of his rights and interests.  
He therefore, by his said guardian,  
commends himself and his  
rights and interests to the protec-  
tion of the Court, and prays  
that no decree may be pronounced  
which will tend to his prejudice.  
And having fully answered



The said respondent prays to  
be hence dismissed with his  
reasonable costs in this  
behalf expended, and he will  
ever pray etc.

J. B. H. Small Guardian ad  
Litem for Bradley Kern

Bradley Kern  
vs  
E. B. Quinsey  
Adm  
vs  
Guardian ad  
Litem  
C. B. Horton

Filed July the 1st 1902

A. B. Mearns Clerk



C. P. Carter and others .....Complainants.

Vs.

In Chancery

Floyd Kern and others.....Defendants.

This cause came on this day to be heard upon the papers formerly read therein, and the report of Commissioner R. L. Pennington filed herein this day showing that the purchasers of the land sold in this cause, to-wit, E. N. Brickey and Delia Brickey have paid the whole of the purchase money agreed to be paid by them, and was argued by counsel.

On consideration of all which and it having heretofore, to-wit, on the 15th day of September, 1904, been ordered that R. L. Pennington, who was thereby appointed a Special Commissioner for the purpose, should, after the whole of the purchase money should have been paid, execute and deliver to the said E. N. Brickey and Delia Brickey a deed of conveyance with covenants of special warranty conveying the land purchased by them, and that the said R. L. Pennington, Commissioner, has made the said deed and has filed the same herewith, and the same being unaccepted to it is therefore adjudged, ordered and decreed that the said deed be and the same is hereby approved and confirmed, and upon the payment of the usual fee of \$5.00 for making the said deed, the said Pennington will deliver the same to the said Brickey.

It further appearing to the court that there has accrued other costs in this case since the last taxation of costs therein, it is further adjudged, ordered and decreed that the said officers of the court performing the said services, will recover of the defendants Floyd Kern, E. N. Brickey and Delia Brickey their several costs for which execution may issue in their favor.

And there remaining nothing further to be done in this cause the same is stricken from the docket.



C. P. Carter has  
vs. { *Stenogram*

Floyd Kerner

Entered in C.O.B.  
#8, page 526

Entered this Sept,  
18. 1909-  
J. O. W. Stum



C.P.Carter, Complainant

vs


Floyd Kern et al, Defendants.

In Chancery

This cause came on this day to be heard upon the papers formerly read and the report of special commissioner R.L. Pennington filed herein on the 9th day of February, 1904, and was argued by counsel. On consideration of all of which, and said report of said commissioner being unexcepted to, the same is hereby approved and confirmed, and the sale made by said commissioner to E.N.Brickey and Delia J.Brickey of the land set out in said bill is hereby approved and confirmed according to the terms of agreement entered into by the said Brickeys, the Stoney Creek Lumber Co., C.P.Carter, and Floyd Kern, R.L.Pennington, who is hereby appointed special commissioner for the purpose will, after all of said notes have been fully paid, make, execute and deliver to the said E.N. Brickey and Delia J.Brickey jointly a deed for said tracts of land, for which services, when said deed shall have been made, said Delia J.Brickey and E.N.Brickey will pay to the said R.L.Pennington, commissioner, the sum of \$5.00. And this cause is retained upon the docket until said notes are fully paid and said deed is made and confirmed. And this cause is continued.



C.D. Carter et al

v  Secre

Floyd Kern - et al

Em. C.D.B. No. 7 p379

Enter this name

July - 15 - 1904 -

Haw, Secre



C.P.Carter

Complainant,

vs

In Chancery

Floyd Kern, et al.

Defendant,

and

Stoney Creek Lumber Company (Incorporated) Petitioner

vs. Petition in first named cause,

Floyd Kern et al,

Defendants,

This cause and petition came on this day to be heard upon the papers formerly read therein and the depositions of witnesses taken in behalf of the Stoney Creek Lumber Company, and was argued by counsel.

On consideration of all which it is adjudged ordered and decreed C.P.Carter recover of the defendant Floyd Kern the sum of One hundred and Ninty seven dollars and 68 cents and the costs of the first named suits, subject to a credit of \$89.34 as of May \$26.1902, and the sum of \$30 as of Aug 23 day, 1902, <sup>\$25.00 Nov. 3, 1902</sup> that the Stony Creek Lumber Company recover of the said Floyd Kern the sum of \$343.10 with interest thereon from the 13th day of ~~March~~ September, 1902, the amount of the note sued on in this cause, which note waives the benefit of the homestead exemption; that the said Stony Creek Lumber Company also recover <sup>of the said Floyd Kern</sup> the furthur sum of \$104.02 with interest thereon from the 19th day of May, 1901, subject to to a credit of \$25.00 as of June 28th 1901, and the costs of the said petition including an attorneys fee to be taxed as part thereof.

And it furthur appearing to the court that the said deed of Floyd Kern to Delia J. Brickey and Bradley Kern dated the 17th day of May, 1902 is void as to the creditors of the said ~~Kern~~ Floyd Kern, and especially the said debt of the said C.P. Carter and the Stony Creek Lumber Company because the same is voluntary and without consideration, it is furthur adjudged ordered and decreed that the same is hereby set aside and declared for naught as to the said plaintiffs' debts; and the said C.P. Carter is hereby adjudged to have a lien on the said land conveyed by the said deed from the date of the filing of his bill in this cause, to wit, the 22nd day of May, 1902, and the said Stony Creek Lumber Company is



hereby adjudged to have a lien on said tract of land from the date of the filing of its petition herein, to wit on the 10th day of November, 1902, for the amount of their respective claims as hereinbefore decreed; and unless said sums of money together with said costs are paid within 20 days from this date, then Chas. B. R.  
Munyon who is hereby appointed a special commissioner for the purpose, will after having executed bond before the clerk of this court in the penalty of \$1000, condition as the law requires and after having advertised the time terms and place of sale for 30 days by written or printed notices posted at at least three public places in Lee County, will proceed to make sale of said tract of land at public outcry to the highest bidder at the front door of the court house of Lee County, on a credit of one and two years time in equal installments, except a sum sufficient to pay the costs of the said suits and the commissions of sale, which he will require to be paid in hand, and for the deferred payments said commissioner will take notes with good personal security, and he will report his action to the next term of this court and this cause is continued.



C. P. Carter

85  $\frac{3}{4}$  Acres

Floyd Kernick

Each this date

Nov. 7, 1903.

H. A. W. Shum

Entered Nov. 7-1903  
C. O. D 7. Page 374



C. P. Carter, . . . . . Plaintiff.

vs. (In Chancery.)

Floyd Kern, et al. . . . . . Defendants.

and

(DECREE.)

Stoney Creek Lumber Co., a corporation, - . . . . Plaintiff.

vs. (On a petition in said cause.)

Floyd Kern, et al., . . . . . Defendants.

This cause came on this the 13th day of July, 1903, to be heard upon the papers formerly read, and the answer of the defendant, Floyd Kern, to the said petition of the said Stoney Creek Lumber Co., this day filed in open court and by leave thereof, and general replication to said answer, and was argued by counsel; and thereupon it is ordered that this cause be continued.

And the said defendant, Floyd Kern, praying in his said answer that the same be treated as a bill for an injunction against the said Stoney Creek Lumber Co., and that they be enjoined from the further prosecution of their action at law against him, now pending in this court upon the note and account set up in the said petition; and the court being of opinion that he is entitled to such injunction, it is therefore adjudged, ordered and decreed that the said Stoney Creek Lumber Co. be enjoined and restrained from the further prosecution of their said action at law upon the said note and account, until the further order of this court; but this restraining order shall not be effective until the said Floyd Kern, or some one for him, shall have executed a bond before the clerk of this court in the penalty of five hundred dollars, conditioned <sup>upon the payment of the said debt in full & that</sup> ~~as required by law~~, and the said defendant is given thirty days in which to execute the said bond.

\* Costs of this suit & the performance of the future order of this Court to be made herein.



Stoney Creek Lumber Co.

v. { Sulchauncy

Floyd Kern.

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Decree

Ent. Co. B. 7, P. 334

Enter this decree  
July 13, 1903.

H. A. W. Shaw



C. P. Carter

Complainant

vs.

In Chancery

Floyd Kern - et al - Defendants

This cause came on this day to be heard upon the bill of the complainant & exhibits filed therewith, and the answer of B. H.

Swanee guardian ad litem for Bradley

Kern, & general replication thereto, & it

appearing to the Court that the defendant Floyd Kern, & it

& before master of The Stony Creek

Lumber Co. they on hereby permitted

to file this petition in this cause

making the said defendants Floyd

Kern, Bradley Kern (infant) & Delia

J. Bradley parties defendant to this petition

& B. H. Swanee is hereby appointed a

guardian ad litem for said infant

defendant to defend said petition of

The Stony Creek Lumber Co. and the

said B. H. Swanee is hereby appointed

permitted to file the answer of the

said infant defendant as guardian.

ad litem to which there is general

replication by the said petitioner. And

as to the said defendant ~~of the~~ to

the said <sup>the</sup> Stony Creek Lumber Co will

return this petition at rules &

this cause is continued -



C.P. Carter

or <sup>3</sup>/<sub>3</sub> Decree

Filed Here also

Entered on Co. B. 7

No 177.

Carter this Nov 10

1902-

H. W. Shum



To *Floyd Kern, (Brother Kern by his guardian  
ad litem B. H. Seaver) & Delia Brubaker*

Take notice that *we* shall, on the *21<sup>st</sup>* day of *Sept* 190*3*,  
at *the law office of P. H. Drummond in the*  
*town of Jarrsville, Va.*  
between the hours of *8* A. M. and *8* P. M., on that day, proceed to take the depositions  
of *E. M. Snider* and others, to be read in evidence in \_\_\_\_\_ behalf,  
in a certain *suit* depending in the *Circuit* court for the *County*  
of *Lee* wherein you are *Defendants*  
and *we* are *Plaintiffs*,  
and if from any cause, the taking of the said depositions be not commenced on that day, or, if com-  
menced, be not concluded on that day, the taking of the same will be adjourned and contin-  
ued from day to day, or from time to time, at the same place and between the same hours, until  
the same shall be completed.

Very respectfully,

*Strong Creek Lumber Co*  
*By Counsel.*



*Strong Creek Lumber Co.*

vs.

NOTICE TO TAKE  
DEPOSITIONS.

*Floyd Kermel*

*Pennsylvania* p. q.

Executed left  
the 16<sup>th</sup> 1903. by  
delivery to Floyd  
Kern Bradley,  
Kern and Lelia  
Brisley a true  
copy of the  
within stated

*John Hall S.S.*  
*for J. Miller S.S.C.*



# Credits

1901.	Balance due F Kern	\$ 3.42
April 15	By Wages Logging Logbook page 81	97.39
May 24	" " " " " 95	169.71
June 15	" " " " " 95	142.28
July 15	" " " " " 95	155.03
Aug 31	" " " " " "	114.37
Sept 16	" " " " " "	133.71
Oct 15	" " " " " "	76.55
Nov 16	" " " " " "	70.44
27	" Leash	260.00
Dec 21	" "	141.50
1902		
Jan 27	" "	32.50
Jan 28	" Wages Logging Logbook page 95	22.76
Feb 15	" " " " " "	125.95
Mar 13	" " Reserve " " " "	195.26
Mar 13	" 10 days work 6 horses wagon not turned in by Jones	75.00
May 6	" Leash (Pogahon)	5.00
		<hr/> 1820.87



1901

Floyd Kern  
Dr toStony Creek Lumber Co  
Tacoma, Wa.

April 15	Robert Kiser Balance due on horse	10.00
	" store a/c	142.96
May 11	" cash (paid to C Plaster)	100.00
15	" commissary	154.14
25	" cash	50.00
June 15	" commissary	180.11
July 1	" cash	50.00
15	" commissary	124.33
29	" SPMuir	.50
31	" cash	40.00
Aug 15	" commissary	160.71
27	" cash	25.00
30	" "	2.49
31	" boxing & thumb	1.75
Sept 16	" commissary	155.14
Oct 1	" cash <small>Paid to W. H. Flannery on order</small>	50.00
1	" "	15.00
Oct 30	" commissary	154.81
Nov 5	" cash	10.00
11	" "	5.00
15	" commissary	91.12
16	" J. H. Jones Ins. <small>use of wagon 3 days to Nov. 15 - 1901.</small>	19.00
27	" cash	50.00
Dec 15	" commissary	104.33
21	" cash	25.00
28	" " <small>Paid check to W. H. Flannery.</small>	66.29
		1787.68



1902	Brought forward		787.58
Jan 15	To commissary		130.31
17	" cash		6.45
27	" "		3.60
"	" "		3.88
Feb 15	" Feed		2.25
"	" "		36.82
"	" commissary		80.13
22	" cash		8.50
"	" "		9.60
28	" "		7.25
Mar 3	" "		7.50
10	" Sundries	Jones Mrs. 2.50 Feed 42.80 conv. 22.20	67.50
13	" cash	(more cash com)	15.00
			<u>2166.57</u>
Credits			2166.47
			<u>1820.87</u>
			345.60
Error favor Kerns			2.50
			<u>\$343.10</u>



Itemized acc of work done by teams  
of Floyd Kern's in hauling logs  
by day, 4-teams.

1901.

Oct

16-17-18-19-20-21-22-23-24-25-26

28-29-30-31-15 days

Nov

1-2-5-6-7-9-11-12-13-14-15=11 days

Total 26 days @ 10<sup>00</sup> day 4-2 horse teams \$26.00

Nov.

16-18-19-20-21-22-25-26-27-28-29-

30- Total 12 days @ \$10.00 day \$120.00

Work done on coal Pit - 1 team

Dec

{ 3 - 4 - 5 - 6 - 7 - 8 }  
5 hours 5 hours

Total 5 days @ 2<sup>50</sup> day \$12.50

Individual work

Dec

{ 2 - 3 - 4 - 5 - 6 - 7 - } { 10 - 11 - 12 - 13 }  
5 hours 5 hours

Total 9 days @ 1<sup>00</sup> day 9.00

\$141.50

Team work 2 teams \$5.00 day

Dec

{ 26 - 28 - 29 - 30 }  
5 hrs 5 hrs

January  
1 - { 2 - 3 - 4 - }  
5 hrs

Total 6 1/2 days

@ 5<sup>00</sup> day \$32.50



Agreement entered into this day, between the Stony Creek Lumber CO., Inc. of the one part and Floyd Kerns and Clements Winegar of the other part. The said Kerns and Winegar agree to haul all of the Poplar and Cucumber logs from what is known as the Howard place to the pits at the end of the main line of the Railroad of the Stony Creek Lumber CO., Inc., within a reasonable time, say about July 1st, ~~1900~~ 1901. The said Company agrees to see that the said Karns and Winegar are allowed to make a good wagon road through the land of Henry Eagan for the necessary hauling out of the Howard timber, they to use due care and diligence not to damage the land, any more than is absolutely necessary. And for this work the said Stony Creek Lumber CO. Inc., agree to pay the sum of \$2.75 per thousand feet, log measure, the sum of 25 cents per thousand feet to be retained until the completion of the work. The said Karns and Winegar also agree to log the poplar and Cucumber timber, 54 inches and over in circumference on the North ridge of the James Boatwright land, and deliver same to the railroad of the Stony Creek Lumber CO; the said job to be completed by ~~July~~ <sup>August</sup> 1st, 1901. The said Kerns and Winegar agree to keep the County road over which they haul in good repair, and in case of their failure to do so, the said Stony Creek Lumber CO, is to do the necessary work on same from the Boatwright house to the end of the Railroad, ~~the~~ charge of one half of the cost of said road to said Kerns and Winegar. The Stony Creek Lumber Company Inc., agrees to furnish the necessary timber free of charge for the repairing of the road where necessary. The Stony Creek Lumber Company agrees to pay the said Kerns and Winegar the sum of \$4.00 per thousand feet log measure for the said logging job, the sum of 50 cents per thousand feet to be retained until the completion of the job.

The said Kerns and Winegar agree to roll the logs over the cleared land.

STONY CREEK LUMBER CO., INC.  
*C. H. Eagan*  
*F. Kerns*  
*C. Winegar*



Kerns Muegar



98  
302  
50  
14.82

The deposition of E.M.Henofer taken before me Geo.P.Cridlin a notary public in and for the county of Lee and state of Va., on the 21st day of Sept. ,1903,pursuant to notice hereto attached, at the law office of R.L.Pennington in the town of Jonesville,Va, to be read as evidence on the behalf of the plaintiff in a certain suit in chancery pending in the circuit court for Lee county, wherein the Stoney Creek Lumber Company (incorporated) is plaintiff and Floyd Kern et al are defendants.

Present R.L.Pennington,of counsel for plaintiff,

L.T.Hyatt,counsel for Adult defendants,

B.H.Sewell,guardian ad litem for Bradley Kern.

E.M.Henofer,a witness of lawful age being first daly sworn deposes and says,

Ques. State your age residence,occupation and business relation to the Stony Creek Lumber Co.?

Ans.Age 39, occupation general manager of the Stony Creek Lumber Company 's plant,residence Stony Creek Scott Co. Va. I am also secretary of said company.

Ques.

Are you acquainted with Floyd Kern,and if so did he ever do any work for your company ?

Ans. I am acquainted with him and he did considerable work for our company.

Ques.On the 10th day of March,1902,it appears by a note ~~suitd~~ on bearing that date,that Floyd Kern executed to your company a note for the sum of \$343.10,due six months after date of said note,please state,if you know what said note was executed for and if he owed your company said sum of money at that time?

Ans. The said note was executed for a sum due ~~to~~ this company by said Kern for amount overpaid him on logging contracts and for store accounts run up.

Ques. How often did you make settlements with Mr.Kern on the work done by him and supplies,goods and money furnished said Kern?

Ans. Once every month,the ~~moths~~ <sup>from</sup> ran ~~for~~ the 15th to the 15th of each month,at the close of each month the accounts were gone over



and the amounts <sup>due him</sup><sup>2</sup> agreed on.

Ques. Have you your account books present, and if so have you made off from them a statement of the <sup>n</sup>monthly settlements, and if you have will you please file said copy from said books as part of your deposition?

Ans. I have present all the books showing in full the items of account between the said Kern and the said Stony Creek Lumber Company from the time said Kern began work for the company until the account was closed with him and he quit work. I have made off a statement shown the monthly settlements, that is showing the total amount of items which were furnished said Kern by said Company and the total amount of credits to which he was entitled for each month, and I here file the said statement as part of my deposition; I have compared the said statement here filed with my deposition with the said books of the said company and know that the same is correct.

Ques. In Mr. Kern's answer he claims that there is a balance due him of 50 cents per thousand on logs taken from the lands of Frank Boatright and 25 cents per thousand for logs taken from the Dr. Howard land which was retained out of the price for which he was to receive for the logging of said timber which has not yet been credited to his account; please state how this is.

Ans. As to the Boatright boundary he has had credit for the full amount as shown by the said statement filed with my deposition, which is represented by the credit of \$195.26, as of March 13, 1902. As to the Howard land, while the contract stated that there was to be a retain of 25 cents ~~6~~ on the thousand, it was not retained but credited up at the end of each month. The said books show that he was credited each month for the full contract price per thousand of \$2.75.

Ques. Was the amount that was retained on the Boatright land of 50 cents per thousand taken into the <sup>settlement</sup>~~settlement~~ at the time of the execution of the said note, and did he get credit for said amount before the execution of said note?

Ans. The amount referred to in the question was taken into account, and Mr. Kern received credit for the amount before the execution of



of the said note aforesaid.

Ques. In the answer of Mr. Kern on page 2 he makes the following statement "On the day that the said note was executed, respondent went to the office of E.M. Henofer, manager of the said company, and told him he had completed his ~~settled~~ contract, and that they had better settle. Said Henofer went over the books of the said company and announced that said respondent was due the said company \$343.10, and wanted him to execute a note for the same. Respondent then told the said Henofer that he was illiterate, and could not tell any thing about the books and asked him if after signing the said note, he would be permitted to go over the books, and if any mistake occurred or should be discovered the same should be credited if necessary upon said note, and with this understanding the said respondent executed the said note." Now please state if this is how and what occurred at the time of the execution of the said note, and if not state what did occur?

Ans. I have no recollection of having made any such statement. What I distinctly remember, however, I said to Mr. Kern, "Now Floyd Before you sign this note would you like to get some one to come in and look over the books and see that your account is all correct before signing the note?" and he replied to the effect that he did not consider it necessary, that I had always dealt honestly with him to the best of his knowledge during all our previous dealings. I told him the books were open for his inspection at any time. That is about the sum total of the conversation. And he signed the note.

Ques. Did he ever get any one to come and examine the books or come himself?

Ans. He never did. The books have been open for inspection at any time.

Ques. In Mr. Kern's answer he also states that after the execution of the said note it was discovered that he was entitled to a further credit of \$75 for 10 days hauling with teams; please state if he was entitled to any such credit and if so had he had credit for it before the execution of the said note?

Ans. As the statement filed with my deposition will show Mr. Kern had already had credit for the hauling with the teams amounting to



\$75.00 at the time of the execution of the said note. It is not a fact that Mr. Kern called my attention to the fact that he had not had credit for the amount after the execution of the said note, and that I agreed to give him credit on the note. He had already had credit for it at the time of the execution of the note. He called my attention to it at the time we were figuring up his account and it was figured in the settlement.

Ques. In Mr. Kern's answer he also claims a credit for labor as night watchman for ten nights at \$1.25 per night for which he has never had credit, please state what services he performed and whether or not he has credit for the amount.

Ans. Mr. Kern did do some night <sup>t</sup>watching at the mill after the date of the execution of the note, ~~but he had no credit for it~~ <sup>amounting to \$8.25</sup> but this was paid to him in a black smith bill of \$1.40 and the amount of the store account between the 13th and 15th of March, which is \$8.64, which was given him in lieu of the work as night watchman.

So Mr. Kern has not only been paid what the amount of his services amounted to but more.

Ques. In Mr. Kern's answer he states that after the 13th day of March, 1902, he did a lot of hauling with a four horse team at the price of \$5.00 per day, the exact number of days he does not know but he thinks is some 15 days. Please state if after the said date he did do any work for your company?

Ans. He did not do any work for our company after the execution of the said note, <sup>with his teams,</sup> and Mr. Kern admitted to me to day in talking about the matter that he did not do any work after the note was executed with the teams. *all the work he did was the night watching referred to*

Ques. Mr. Kern states in his answer that at the time he quit work for your company he left on your premises a log wagon and that your company has since used the wagon and that your company should pay him for the use of the wagon. State what you know about the wagon and whether your company has used the same, and if so how much,

~~and your company is responsible for the wagon at the time that it was used~~



and what you think the wagon was reasonably worth at the time he left it and whether or not you have put ~~the~~ wagon in better or worse condition since he left it there?

Ans. His father-in law Mr. Williams told us to dispose of the wagon to the best advantage possible, we used the wagon some after having it fixed up just how much I do not know, but we are perfectly willing to allow him the sum of \$15.00 and take the wagon, which is more than it could have been sold for had we sold it to an outsider. Since the wagon was left there we have spent more on the wagon than the hire of it would amount, it was in bad condition when left there and had to be repaired before used. There was another one of <sup>his</sup> ~~the~~ wagons left there which was about the same kind of ~~wagon~~, which was levied on and sold at public auction by an officer and it only brought \$2.50.

Ques. In Mr. Kern's answer he states that he gave to you an order on Charles Perry for \$28.75 for which you were to give him credit when the order was collected and that you had collected \$25.00 on the order and had not given him credit for the amount collected. Please state if you have credited Mr. Kerns account with all that has been collected on the order referred to?

Ans. Mr. Kern has had credit for the full \$25 that has been paid on this order. There was \$10 credited upon the account sued on before the suit was brought and there has since been placed upon the account, <sup>credit for</sup> the \$15 that has since been collected.

Ques. Does Mr. Kern owe your <sup>Company any</sup> ~~any~~ other sum of money than the amount represented by the said note, and if so what is it and how much?

Ans. At the time of the bringing of this suit he owed us on an open account \$94.02 balance as shown by the itemized statement filed with the suit, on which there has since been credited the sum of \$15.00 amount that was collected on the Perry order.

Ques. Does the said Kern owe said sum of money represented by said account subject to the credits given him thereon?

~~How~~ He does. All the items ~~gave~~ charged in said account were received by him.



Ques. Mr. Kern stated in his answer that the said note was obtained from him by fraud and misrepresentation. Please state whether there was any unfair dealing or untruthful representations made to said Kern when he executed said note.

Ans. There was no unfair <sup>A</sup> ~~dealing~~ or untruthful representation made to Mr. Kern. It was a plain <sup>gh</sup> ~~straight~~ forward business transaction and Mr. Kern was invited to get any one to examine the books before executing the said note but he declined to do so.

Ques. Please state if at the time he executed the said note to your company he made any representation about the title to his land, and what land he owned.

Ans. He did make some representations about the title to the land. He stated that he owned <sup>M</sup> ~~some~~ two or three pieces of land and that the same was free from all encumbrances with the exception of some \$50 or \$75 still <sup>F</sup> ~~owing~~ on the last piece he had bought. He stated that one of these tracts he and his step father had bought together, and that he considered the land worth from \$1000 to \$1500, and that there was valuable timber on some of it, worth some few hundred dollars. I inquired very particularly from him about this land before I agreed to accept a note for the amount due the company.

Ques. Have you shown Mr. Hyatt the defendant's attorney the books of the company in which the said accounts are, and the pages on which said accounts are written?

Ans. I have <sup>not only</sup> ~~as well~~ the general books <sup>but also</sup> ~~as~~ the store books showing the <sup>separate</sup> items gotten by said Kern, which were charged up in a lump sum on the general books at the end of the month, and I have also shown the books to day to Mr. Kern. *also the books containing the monthly log accounts.*

#### X Examination.

Ques. What day of the month was your general settlement day for work done in the preceding month?

Ans. Our months ran from the 15th of one month till the 15th of the next month and settlements were usually made from 10 to 15 days after the 15th.



Ques. I will ask you to please examine your books and state the status of ~~of~~ the account between your company<sup>A</sup> and Floyd Kern as of Jan 15, 1902.

Ans. At that time the books showed a balance in favor of the company of \$553.59.

Witness claims 1 day and 108 miles mileage, \$4.82.

And furthur this witness saith not.

*E. M. Henofer*

Virginia Lee County to wit:

I, Geo P. Cridlin a notary public in and for the county of Lee and state aforesaid do hereby certify that the foregoing deposition of E.M. Henofer was taken, sworn to and subscribed before me at the time and place and for the purpose in the caption mentioned.

Given under my hand this the 21 day of Sept, 1903.

*Geo. P. Cridlin N. P.*



Stone Creek Lumber Co.  
No. 1 in Class  
Stone Creek Lumber Co.  
Exhibition of  
E. M. Kiefer.

Stone Creek Lumber Co.  
Received from Geo. P. Candler  
the N.P. before whom  
taken and filed. Sept  
22nd 1903.  
J. B. Munsey Clerk

N.P.	4.50
Unit	4.80
	<hr/>
	\$8.30





Dec. 27

190 文

Received from R. L. Pungentone Co  
in New Creek, Nebraska on 2. 11. 1894  
Two & 25/100 Dollars.

for recording deed of trust

§ 221—

B. M. Morgan Clark







it a part of his report. He reports that the Stoney Creek Lumber Company and C.P.Carter accepted the terms of settlement made as aforesaid and agreed that the court should confirm the sale to said Brickeys upon the terms of said settlement. The said Brickeys paid your commissioner the sum of \$72.05, which your commissioner has for the purpose of paying costs, which will be disbursed according to the parties entitled to it, upon the confirmation of the said sale, in said agreement.

Respectfully submitted

Robert L. Cunningham  
Commissioner.



C. P. Carter

v.  $\frac{2}{3}$  Reprint of  
Sacc-

Floyd Kerue et al

Filed Feb 9-1904  
H. C. T. Ewing clk.



Virginia,

At a Circuit Court begun and held for Lee County, at the Court-house thereof, on Monday the 15th day of February 1904.

C. P. Carter Complainant.

vs ) In Chancery

Floyd Kern et al, Defendants.

This cause came on this day to be heard upon the papers formerly read and the report of Special Commissioner R. L. Pennington, filed herein on the 9th day of February 1904, and was argued by counsel. On Consideration of all of which, and said report of said Commissioner being unexcepted to, the same is hereby approved and confirmed, and the sale made by said Commissioner to E. N. Brickey and Delila J. Brickey of the land~~s~~ set out in said bill is hereby approved and confirmed, according to the terms of agreement entered into by the said Brickeys, the Stoney Creek Lumber Co., C. P. Carter and Floyd Kern, R. L. Pennington who is hereby appointed Special Commissioner for the purpose will after all of said notes have been fully paid make, execute and deliver to the said E. N. Brickey and Delila J. Brickey jointly a deed for said tracts of land~~s~~ for which service, when said deed shall have been made said Delila J. Brickey and E. N. Brickey will pay to the said R. L. Pennington, Commissioner the sum of \$5.00.

And the cause is retained upon the docket until said notes are fully paid and said deed is made and confirmed. And this cause is continued.

A Copy, Teste: W. C. T. Ewing Clerk.



10111 10000 10000 10000

is contained:

are fully paid and said debt is paid and confirmed. And this entire  
for the same is retained upon the check with said notes  
the said U. S. Commissioner, Commissioner the sum of \$2.00.

each made said debts of \$1000 and \$1000. \$1000 will pay to  
said estate of James C. Brown and said estate and said debt shall have  
to the said E. H. Brown and said estate. \$1000 in full of said debt for

all of said notes have fully paid make, execute and deliver  
these specified Special Commissioner for the purpose will after  
under CO. U. S. Carter and Floyd Veto, E. H. Brown and is

otherwise subject into to the debt of the said estate. The above shall  
will be properly approved and confirmed. The above shall be  
E. H. Brown and said estate. \$1000 in full of said debt for

all of said notes have fully paid make, execute and deliver  
these specified Special Commissioner for the purpose will after  
under CO. U. S. Carter and Floyd Veto, E. H. Brown and is

C. C. Carter  
vs  
Floyd Kerri  
R. L. Pennington  
Commissioner

Executed Mar. 29,  
1904, by delivering  
a copy of the within  
to R. L. Pennington  
in person.  
R. L. Pennington  
S. F. C.

U. S. Carter  
Commissioner

James Brown, on Monday the first day of September, 1904.  
At a Circuit Court held and held for the County of the County  
Virginia.

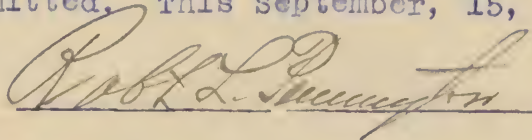


To the Hon. H. A. W. Skeen, Judge of the Circuit Court for  
Lee County, Virginia.

Your undersigned Special Commissioner begs leave to report  
that in the Chancery cause of C. P. Carter and others, complain-  
ants, vs. Floyd Kern and others, defendants, that the purchasers  
of the land sold by your said Commissioner have paid their pur-  
chase money notes and that pursuant to a decree rendered in this  
cause, February 15th, 1904, Your Commissioner has made the deed  
required and herewith files the same as part of his report.

Your Commissioner further reports that there are some ad-  
ditional costs accrued in this case which have not been paid by  
the defendants and that judgment should go against them in favor  
of the officers of the court for said sums of money.

Respectfully submitted, This September, 15, 1909.

 Commissioner.



C. P. Carter, et al

25. { Report of  
      { ~~Discrepancy~~  
      { Court

Floyd Kern -

Filed Apr 15 - 1959 -

H. C. J. Ewing,  
Clerk.

for



This deed made and entered into this Dec. the 31st, 1897 by and between Thos. McPherson and Lydia his wife of the County of Lee and State of Virginia of the first part and Floyd Kern of the County of Scott and State of Virginia of the second part Witnesseth that the parties of the first part doth grant bargain and sell to the party of the second part all of a certain tract or parcel of land lying and being in the County of Lee and State aforesaid lying on the South side of Newmans Ridge Beginning at a big spring a corner made by Jesse Roberts Sr. to his children now a corner between Thos. McPherson & James Wallen & others South west up a spur on a line of Dannel Roberts & Jesse Roberts to the top of a spur & thence Westwardly with the hy ground to two Read buds & hickery thence N.W. with a fence through the field and up the Ridge with a marked line made by Thos. McPherson & Floyd Kern to the Dannel Roberts North line to a Stake in said line & with said line Eastwardly to a conditional line made by Calob Herd & Floyd Kern thence South down the Ridge to a planted rock near a hollow a corner made by Floyd Kern & Calob Herd thence Eastwardly with a conditional line made by said Kern & Herd to a rock <sup>near a road</sup> that leads from Calob Herds house down the ridge and with a conditional line made by said Herd & Kern to a rock at the corner of the fence thence a strait line to the beginning supposed to contain seventy acrs be the same more or less for the consideration of the sum of \$475.00 in hand paid and the parties of the first part will warrant and forever defend the title to the within named land against the claims of all persons wher in we have hereunto fix our hands and seals this the day and date above written.

Thos. McPherson (Seal)

Lydia McPherson (Seal)

Virginia Lee County, to-wit

I, James N. Horton a acting Justice of the peace in and for the County & State aforesaid do certify that Thos. McPherson & Lydia his wife whose names is signed to the foregoing deed bearing date Dec. the 31st, 1897 personally appeared before me in my County and acknowledged the same to be there act and deed and that they had willingly executed the sam. Given under my hand an official seal this Dec. the 31st 1897.

James N. Horton J.P.



Virginia, Lee County to-wit;

In the office of the clerk of the County Court for said County the 19th,  
day of May 1899. This deed was presented, and together with the certificate  
thereto annexed admitted to record.

Teste; -S.V.F. Richmond Clerk

By M.D. Richmond D.C.

A Copy, Teste; *B. Morgan* ----- Clerk  
( D.B.No.34, Page 414)



Thos. McPherson et al  
vs  
Lloyd Kern

---

copy -

"Exhibit No. 2"

Clerk 50 cts,



C.P.Carter

vs. ( In the Circuit Court of Lee County.

Floyd Kern, Delila J.Brickey, Bradley Kern and L.T.Hyatt, Commissioner.

Memorandum of Lis pendens.

This is a suit instituted in the Circuit Court of Lee County, Virginia, under the title of C.P.Carter vs. Floyd Kern et al; the general object thereof is to set aside, annul and vacate a deed executed and dated the 17th day of May, 1902, by Floyd Kern to Delila J.Prickey for life and after her death to Bradley Kern, which deed was made upon consideration not deemed valuable in law and made for the purpose of hindering, delaying and defrauding the creditors of the said Floyd Kern; and to collect from the said Floyd Kern the sum of \$197.68 with interest thereon from the 6th day of August 1901, and to subject the following described lands to the payment of said debt: the property intended to be affected by this suit is a tract or tracts of land situated on Newmans Ridge in Lee County, Va., and is the same land conveyed by the said Floyd Kern to the said Delila J.Prickey and Bradley Kern by the deed aforesaid dated on the 17th day of May, 1902, and recorded in the Clerk's office of Lee County, in Deed Book 39 page 6. One of said tracts is bounded and described as follows:

Beginning at a large spring corner made by Jessee Roberts dec'd now corner of Caleb Herd and James V.Wallen S.W. up a spur on a line of Daniel Roberts and Jessee Roberts to the top of said spur thence westwardly with the high ground to two red buds and Hickory N.W. with a fence through the field and up the ridge with a marked line made by Thomas McPherson and Floyd Kern to Daniel Roberts north line to a stake in said line and with said line eastwardly to a conditional line made by Caleb Herd and Floyd Kern thence south down the ridge to a planted rock near a hollow another corner made by Caleb Herd and Floyd Kern thence eastwardly with a conditional line made by said Herd and Floyd Kern to a rock near a road that leads from Caleb



Herd's house down the ridge and with conditional line made by said Herd and Kern to a rock at the corner of a fence thence a straight line to the beginning, containing 70 acres more or less; also another tract, being the half interest in a 25 acre tract purchased by said Kern and Brickey from James V. Wallen.

The names of the persons whose estate is intended to be affected by this suit are Delila J. Brickey and Pradley Kern.

C. P. Carter, by

G. T. Duncan and

Geo. P. Brickey attorneys

Virginia, Lee County to-wit;

In the Office of the Clerk of the County Court for said County the 22nd day of May 1902. This Lis Pendens was presented, and admitted to record.

Teste; B. Morgan ----- Clerk



L. P. Carter

vs  $\frac{3}{3}$

Memoranda

Copy of them it also.  
~~Subscribed by Bradley~~

of his pendens

Recorded in Deed  
Book No 39, page 31

Indexed

Examined May 24, 1902

"Exhibit No. 5"

Clerk #125-



Floyd & Korne

As to Korne the eastern side of  
the road - begins east of a tree  
beginning a chain of pine 600 -  
+ runs to a sugar tree, thence  
from the sugar tree to Sessopoc -  
on the north line -

Em. Bricker & Jane Bricker is  
to have the west side on the  
north side of the line &  
a right of way over the Korne  
port to the public roads -



Carbon Copy



C.P.Carter,

Complainant,

vs : In Chancery in the Circuit Court for Lee County, Va.  
Floyd Kern, Delia J. Brickey, Bradley Kern, et al, Defendants.

Memorandum of Lis Pendens

Filed by The Stoney Creek Lumber Co., in said Cause, petitioner.

In the above styled suit, pending in the Circuit Court for Lee County, Va., the Stoney Creek Lumber Company has filed its petition under section 2640 of the Code of Virginia, the general object of which petition is to have vacated, annulled and set aside a certain deed made by the said Floyd Kern ~~xxx~~ to Delia J. Bickley for her life and after her death to Bradley Kern, which deed was made upon consideration not deemed valuable in law, and for the purpose of hindering and delaying and defrauding the creditors of said Floyd Kern; and to collect from the said ~~Kern~~ Floyd Kern a note of \$348.10 and an account for \$94.02. The property intended to be affected by this suit is the same property which the said Floyd Kern on the 17th day of May, 1902, by deed bearing that date, conveyed to Delia J. Brickey and Bradley Kern, which deed is of record in the office of the clerk of the County Court for Lee County in deed book No. 39 page 6, to which said deed reference is here made for a more particular description of the said land. Said land is situated in Lee County Va., on Newmans Ridge. The names of the persons whose estate is intended to be affected by this suit are Delia J. Brickey and Bradley Kern and Floyd Kern.

Witness the following signature, this the 8th day of November, 1902.

STONEY CREEK LUMBER CO (Incorporated)

By Pennington Bros.

Its Attorneys.

Virginia, Lee County to-wit;

In the Office of the Clerk of the County Court for said County, the 10th day of November 1902. The foregoing writing was presented, and admitted to record at 8:30 o'clock A. M.

Teste; Butt Morgan -- Clerk.



C. P. Carter

vs 30 Lis P. dms  
30 App  
30 Honey Crab  
1 Lumber Co

Flagel Kern -

Recorded in Deed  
Book No 39 page 361

Examined Nov. 10, 1902

Indexed

Clerk .75-cts



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU to summon *Floyd Kern*

to appear at the Clerk's office of our Circuit Court of the County of Lee, at the Court-house thereof, at the Rules to be holden for said Court, on the *3rd* Monday in *December* 1902, to answer *The Stony Creek Lumber Co. (Incorporated)*

of a plea of

*Debt for \$437.12*

Damages *\$437.12* Dollars. And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the *10th* day of *November*, 1902, and in the *127th* year of the Commonwealth.

A Copy—Teste.

A. B. MUNSEY, Clerk.

*A B Munsey* Clerk.



*vs.*

}

Summons in action of

, P. Q.

*Rules.*

*Circuit Court.*



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU to summon

*Floyd Kern*

to appear at the Clerk's office of our Circuit Court of the County of Lee, at the Court-house thereof, at the Rules to be holden for said Court, on the *3rd* Monday in *December* 1902, to answer *The Stony Creek Lumber Co., Incorporated*

of a plea of

*Debt for \$437.12*

Damage *\$437.12*

Dollars. And have then there this writ.

Witness, A. B. MUNSEY, Clerk of our said Court, at the court-house, the *10th* day of *November*, 1902, and in the 12 *7th* year of the Commonwealth.

A Copy—Teste.

~~A. B. MUNSEY, Clerk.~~

Clerk.

*A. B. Munsey clerk*



The Stony Creek  
Lumber Company

Summons in action of

vs.

} Debt

Floyd Kern  
Pennington Bros., P. O.

2<sup>nd</sup> December Rules.

1902 ..... Circuit Court.

Received Dec-11-1902  
Floyd Kern not found  
J. H. Shale H.  
H. H. McIlhenny



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

*again*  
WE COMMAND YOU, That you summon *Floyd D. Kern, Delilia J. Biskey*  
*Bradley Kern and L. P. Heyatt Comr*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the  
said court, on the *1<sup>st</sup>* Monday in *June* 1902, to answer a bill in

chancery exhibited against *them* in our said court by *L. P. Coates*

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house,

the *28<sup>th</sup>* day of *May* 1902, and in the 126<sup>th</sup> year of the Common-  
wealth. A copy, Teste: *A. B. Munsey* Clerk.

Clerk.



L. P. Carter

VS.

{ alias SUBPENA  
IN CHANCERY.

Floyd Kern et al

Duncan & Herdlin, p. q.

To 1st June Rules.

1902. Circuit Court.



The Commonwealth of Virginia,

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, That you summon

*Floyd Kern, Delilia Bickey,  
Bradley Kern, and L. T. Wyatt Commissioners*

to appear at the Clerk's office of the Circuit Court of the County of Lee, at the rules to be held for the  
said court, on the *1st* Monday in *June* 1902, to answer a bill in  
chancery exhibited against *them* in our said court by *L. P. Carter*

And have then there this writ. Witness, A. B. Munsey, Clerk of our said Court, at the court-house,

the *22nd* day of *May* 1902, and in the 12<sup>6th</sup> year of the Common-  
wealth. A copy, Teste: *A. B. Munsey* Clerk.

Clerk.



Executed by delivering a true copy of  
 the within spa. to Della G. Brickey and  
 Bradley Kern on the 23<sup>rd</sup> day of May, 1902  
 and by delivering a like <sup>on said day</sup> copy, to Della G. Brickey  
 mother, and member of family of Floyd Kern  
 over the age of 16 years, for said Floyd Kern,  
 at the usual place of abode of the said

L. P. Carter

SUBPOENA  
 IN CHANCERY.

VS.

Floyd Kern et al

Duncan & Lindlin p. q.

Rules.

To 1<sup>st</sup> June

1902. Circuit Court.

Floyd Kern, the  
 said Floyd Kern  
 not being found  
 at his usual  
 place of abode,  
 and further ex-  
 ecuted on the 31<sup>st</sup>  
 day of May, 1902.  
 by delivering a true  
 copy within spa.

To L. T. By att, Court.  
 This 31<sup>st</sup> day of May, 1902

J. B. Byington D. S.  
 for W. J. Milhem & L. C.



# The Commonwealth of Virginia:

To the Sheriff of the County of Lee, Greeting:

WE COMMAND YOU, that you summon *Floyd Kern, Delia Brickey,*  
*and Bradley Kern an infant*

to appear at the Clerk's office of the Circuit Court of the County of Lee at the rules  
to be held for the said Court, on the *3<sup>rd</sup>* Monday in *December* 1902,  
*Petition in Chancery cause of C. P. Carter vs. Floyd Kern, et als.*  
to answer to a ~~bill~~ in chancery, exhibited against *them* in our said Court by  
*The Stony Creek Lumber Company, an Incor-*  
*poration*

And have then there this writ. Witness. A. B. MUNSEY, Clerk of our said Court, at  
the court-house, the *10<sup>th</sup>* day of *November* 1902, and in the  
12 *7<sup>th</sup>* year of the Commonwealth.

*A. B. Munsey Clerk*



The Stony Creek  
Lumber Company

vs.

SUBPOENA  
IN  
CHANCERY.

Floyd Kern et al

Pennington Bros p. q.

To 2<sup>nd</sup> December Rules

1902, Lee Circuit Court.

Directed by returning to  
Delia Bridgely & Bradley Kern  
Floyd Kern et al this Dec-11/1902  
J. H. Hall, Jr.  
for the Plaintiff J. H. Hall, Jr.